IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Application No.1089 of 2006
In
Criminal Appeal No.381 of 2006

Mr.Liyaqat Allauddin Shaikh .. .. Applicant
v/s.
State of Maharashtra .. .. Respondent

Mr.M.K. Kocharekar for Applicant.
Mr.F.R. Shaikh, Addl. PP for Respondent- State.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.
Dated : 30th July, 2007

P.C. :

1. The applicant, who is original accused No.2, is convicted by the Sessions Court for Greater Mumbai in Sessions Case No.358 of 2003 for offences punishable under Section 392 read with Section 34 of Indian Penal Code and sentenced to suffer 10 years rigorous imprisonment and a fine of

Rs.5,000/- , in default to undergo 2 years rigorous imprisonment. For offence under Section 397 read with Section 34 of Indian Penal Code, he has been sentenced to suffer 7 years rigorous imprisonment. For offence under Section 37(i) (a) punishable under Section 135 of Bombay Police Act, he has been sentenced to suffer RI for one year and to pay a fine of Rs.1,000/- , in default to undergo RI for 2 months. The applicant has prayed for bail.

2. We have heard at some length Mr.Kocharekar, learned Counsel appearing for the applicant. He contended that there are only two alleged eye witnesses to the incident in question. They have identified the applicant in identification parade. The learned Counsel further contended that there are a number of discrepancies in the evidence of these two eye witnesses. The identification parade is held contrary to guidelines laid down in the Criminal Manual and, therefore, it is risky to rely on the identification of the applicant in the identification parade. He submitted that barring this, there is no other evidence on record to show that the applicant has

committed the offences in question. The learned Counsel urged that the applicant is in jail for about 5 years and, therefore, a lenient view of the matter may be taken. He submitted that it is true that the applicant was involved in 12 cases. However, in all the cases, he is either acquitted or discharged. The learned Counsel also submitted that the learned Sessions Judge has erred in ordering the sentences to run consecutively. He submitted that the learned Sessions Judge should have ordered the sentences to run concurrently. The learned Counsel, therefore, submitted that these facts may be taken into account and the applicant may be released on bail. We are not inclined to accept the submissions of Mr.Kocharekar.

3. Affidavit has been filed by one Arun Vitthalrao Wable, Police Inspector attached to the Arms and Ammunition Branch, Mumbai, In paragraph 16 of the said affidavit, Mr.Wable has set out the details 12 cases in which the applicant was involved. Mr.Wable has also stated that the applicant was detained under the Maharashtra Prevention of

Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 for a period of one year and his detention was confirmed by the Advisory Board. While dealing with the application of the applicant, we will have to keep this history in mind.

4. Two witnesses have identified the applicant in the identification parade. He was holding a revolver and standing outside the shop. It is alleged that subsequently he entered the shop and removed the ornaments. In our considered opinion, this is certainly not a case where the applicant can be released on bail at this stage, particularly considering his antecedents. However, since the applicant is in jail for a period of 5 years, we feel that the applicant should be given a chance to renew his prayer for bail after a period of 2 years in case his Appeal does not reach final hearing. Hence, the following order:-

O R D E R

(i) The application for bail is rejected.

(ii) In case the Appeal does not reach final hearing,

liberty to the applicant to file a bail application. Needless to state that at that stage, the bail application will be considered afresh.

5. Application stands disposed of accordingly.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)